



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2018-0225]**

**RIN 1625-AA08**

### **Special Local Regulation; Breton Bay, Leonardtown, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to establish special local regulations for certain waters of the Breton Bay. This action is necessary to provide for the safety of life on these navigable waters of Breton Bay, at Leonardtown, MD, on October 6, 2018 and October 7, 2018. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0225 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY

INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email MST2 Dane Grulkey, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2570, email Dane.M.Grulkey@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On January 22, 2018, the Southern Maryland Boat Club notified the Coast Guard that they will be conducting their fall regatta from 8 a.m. to 5 p.m. on October 6, 2018, and October 7, 2018. The regatta consists of approximately 40 boats, participating in an exhibition of vintage outboard racing V-hull boats; the regatta is not a competition but rather a demonstration of the vintage race craft. Hazards from the regatta include vessels reaching speeds of 90 mph and include risks of injury or death resulting from near or actual contact among participant vessels and spectator vessels or waterway users if normal vessel traffic were to interfere with the event. The COTP Maryland-National Capital Region has determined that potential hazards associated with the regatta would be a safety concern for anyone intending to operate within specified waters.

The purpose of this rulemaking is to protect marine event participants, spectators and transiting vessels on specified waters of Breton Bay before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233, which authorize the Coast Guard to establish and define special local regulations.

### **III. Discussion of Proposed Rule**

The COTP Maryland-National Capital Region proposes to establish special local regulations to be enforced from 7:30 a.m. to 5:30 p.m. on October 6, 2018, and from 7:30 a.m. to 5:30 p.m. on October 7, 2018. The regulated area would include all navigable waters within Breton Bay, from shoreline to shoreline, within an area bound by a line drawn along latitude 38°16'43" N.; and bounded to the west by a line drawn along longitude 076°38'29.5" W., located at Leonardtown, MD. This rule provides additional information about designated areas within the regulated area, including "Race Area", "Buffer Zone" and "Spectator Area(s)." The duration of the regulated area is intended to ensure the safety of event participants and vessels within the specified navigable waters before, during, and after the regatta, scheduled to occur between 8 a.m. to 5 p.m. each day of the event. Except for participants, no vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP Maryland-National Capital Region or the Coast Guard Patrol Commander.

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of Breton Bay during October 6-7, 2018, for a total of 18 hours. The Coast Guard would issue a Broadcast Notice to Mariners via marine band radio VHF-FM channel 16 about the status of the regulated area. Moreover, the rule would allow vessel operators to request permission to enter the regulated area for the purpose of safely transiting the regulated area if deemed safe to do so by the Coast Guard Patrol Commander.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV-A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and

preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the creation of a special local regulation to be enforced a total of 18 hours over two days. This category of marine event water activities

includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Memorandum For Record for Categorically Excluded Actions is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

#### **PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

2. Add § 100.501T05-0225 to read as follows:

**§ 100.501T05-0225 Special Local Regulation; Breton Bay, Leonardtown, MD.**

(a) **Definitions.** (1) **Captain of the Port Maryland-National Capital Region** means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or a Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of



the Port to act on his behalf.

(2) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

(3) Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) Spectator means any person or vessel not registered with the event sponsor as a participant or an official patrol vessel.

(5) Participant means any person or vessel participating in the Southern Maryland Boat Club Fall Regatta event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Maryland-National Capital Region.

(b) Regulated area. All coordinates reference Datum NAD 1983.

(1) Coordinates: The following location is a regulated area: all navigable waters within Breton Bay, MD, immediately adjacent to Leonardtown, MD shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude 38°16'43" N. and bounded to the west by a line drawn along longitude 076°38'29.5" W., located at Leonardtown, MD.

(2) Race area: Located within the waters of Breton Bay, MD in an area bound by a line commencing at position latitude 38°17'07.2" N., longitude 076°38'17.3" W., thence southeast to latitude 38°16'55.3" N., longitude 076°37'48" W., thence southwest to latitude 38°16'50.1" N., longitude 076°37'51.3" W., thence northwest to latitude

38°17'01.9" N., longitude 076°38'21" W., thence northeast to point of origin.

(3) Buffer zone: Located within the waters of Breton Bay, MD. The area surrounds the entire race area described in the preceding paragraph of this section. This area is rectangular in shape and provides a buffer of approximately 125 yards around the perimeter of the race area. The area is bounded by a line commencing at position latitude 38°17'12" N., longitude 076°38'19.6" W.; thence southeast to latitude 38°16'57" N., longitude 076°37'40.5" W.; thence southwest to latitude 38°16'44.8" N., longitude 076°37'48.2" W.; thence northwest to latitude 38°17'00.2" N., longitude 076°38'27.8" W.; thence northeast to point of origin.

(4) Spectator areas: (i). *Spectator area A*. The area is bounded by a line commencing at position latitude 38°16'52.1" N., longitude 076°38'14.2" W.; thence northeast to latitude 38°16'54" N., longitude 076°38'12.5" W.; thence southeast to latitude 38°16'48.6" N., longitude 076°37'59.3" W.; thence south to latitude 38°16'47.4" N., longitude 076°37'59.3" W.; thence northwest along the shoreline to point of origin.

(ii). *Spectator area B*. The area is bounded by a line commencing at position latitude 38°16'59.1" N., longitude 076°37'45.6" W.; thence southeast to latitude 38°16'57.1" N., longitude 076°37'40.2" W.; thence southwest to latitude 38°16'54.3" N., longitude 076°37'41.9" W.; thence southeast to latitude 38°16'51.8" N., longitude 076°37'36.4" W.; thence northeast to latitude 38°16'55.2" N., longitude 076°37'34.2" W.; thence northwest to latitude 38°16'59.2" N., longitude 076°37'37.2" W.; thence west to latitude 38°17'01.7" N., longitude 076°37'43.7" W.; thence south to point of origin.

(iii). *Spectator area C*. The area is bounded by a line commencing at position latitude 38°16'47.2" N., longitude 076°37'54.8" W.; thence south to latitude 38°16'43.3"

N., longitude 076°37'55.2" W.; thence east to latitude 38°16'43.2" N., longitude 076°37'47.8" W.; thence north to latitude 38°16'44.7" N., longitude 076°37'48.5" W.; thence northwest to point of origin.

(c) Special local regulations: (1) The Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(3) The Coast Guard Patrol Commander may terminate the event, or the operation of any participant, at any time it is deemed necessary for the protection of life or property.

(4) The Race Area is an area described by a line bounded by coordinates provided in latitude and longitude that outlines the boundary of a Race Area within the regulated area defined in paragraph (b)(2) of this section. The actual placement of the race course will be determined by the marine event sponsor but must be located within the designated boundaries of the Race Area. Only participants and official patrol vessels are allowed to

enter the Race Area.

(5) The Buffer Zone is an area that surrounds the perimeter of the Race Area within the regulated area defined in paragraph (b) (3) of this section. The purpose of a Buffer Zone is to minimize potential collision conflicts with participants and spectators or nearby transiting vessels. This area provides separation between the Race Area and Spectator Area or other vessels that are operating in the vicinity of the regulated area defined in paragraph (b)(1) of this section. Only participants and official patrol vessels are allowed to enter the Buffer Zone.

(6) The Spectator Area is an area described by a line bounded by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined in paragraph (b)(4) of this section. Spectators are only allowed inside the regulated area if they remain within the Spectator Area. All spectator vessels shall be anchored or operate at a no-wake speed while transiting within the Spectator Area. Spectators may contact the Coast Guard Patrol Commander to request permission to either enter the Spectator Area or pass through the regulated area. If permission is granted, spectators must enter the Spectator Area or pass directly through the regulated area as instructed at safe speed and without loitering.

(7) The Coast Guard Patrol Commander and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). Persons and vessels desiring to transit, moor, or anchor within the regulated area must obtain authorization from Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. The Captain of the Port Maryland-National Capital Region can be contacted at telephone number 410-576-2693

or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). The Coast Guard Patrol Commander can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(8) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio.

(d) Enforcement periods. This section will be enforced from 7:30 a.m. to 5:30 p.m. on October 6, 2018 and from 7:30 a.m. to 5:30 p.m. on October 7, 2018.

Dated: August 13, 2018

Joseph B. Loring,  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.

[FR Doc. 2018-17763 Filed: 8/16/2018 8:45 am; Publication Date: 8/17/2018]